

The Attorney General of Texas

October 26, 1981

MARK WHITE
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

20 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Honorable Edward H. Perry
Assistant City Attorney
City of Dallas
Dallas, Texas 75201

Open Records Decision No. 283

Re: Whether file maintained
by Dallas Park Police on
trainee is available to that
person

Dear Mr. Perry:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a file maintained by the Dallas Park Police is available to the subject of the file. In 1980, the requestor was accepted as a trainee by the Dallas Park Police. She was paid a salary by the Parks Department while undergoing training, but she resigned without completing the course on December 16, 1980. She now seeks to obtain a copy of her personnel file. You contend that two types of information contained therein are excepted from disclosure to the requestor: criminal history information regarding the requestor and members of her family; and the responses of her references and former employers to a questionnaire from the Parks Department.

You suggest that information relating to whether the requestor or any member of her family has a criminal record is excepted from disclosure by section 3(a)(1), as:

information deemed confidential by law, either
Constitutional, statutory, or by judicial
decision.

Regulations issued by the Governor's Criminal Justice Division in response to federal regulations regarding the dissemination of criminal history record information place certain restrictions on the release of such information. Under these regulations published in the Texas Administrative Code, nonconviction data may be released only in certain instances. 1 T.A.C. §3.315. Even the dissemination of conviction data is limited unless the information is obtained from court records or the individual is then within the criminal justice system. Id. §3.313(c). Furthermore, if disclosure of the information is itself prohibited by the regulations, an agency is forbidden to confirm the existence or non-existence of particular criminal records. Id. §3.316. On the basis of these regulations and section 3(a)(1) of

the Open Records Act, we believe that a law enforcement agency may not disclose criminal history record information except in compliance therewith. After inspecting the particular criminal history record information at issue here, it is our decision that it should be withheld from disclosure.

As to the responses of the requestor's references and former employers to a questionnaire from the Parks Department, you suggest that the requestor waived any right to inspect this material by signing a form entitled "Confidential Information Agreement Form." Under the terms of the agreement, the requestor acknowledges the department's belief that:

such information is confidential, and the department cannot reveal the reason of rejection for those applicants who are not accepted.

We need not, however, consider whether this agreement is effective to waive any special right of access to this material by the requestor, since it is clear that she could not waive the public's right to disclosure. In addition, we note that this office has long held that governmental bodies are prohibited by the Open Records Act from entering into agreements to keep information confidential. Attorney General Opinion H-258 (1974); Open Records Decision No. 55A (1975).

With regard to the public availability of this information from references and former employers, you contend that section 3(a)(11) of the act permits the information to be withheld. That section excepts:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

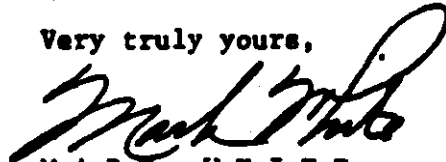
Although section 3(a)(11) has been construed to except only advice, opinions and recommendations, most of the responses of the requestor's references and former employers are properly so classified. Such persons are not within the inter-agency memorandum exception, however, because they are not authorized to act, and do not in fact act, in any official capacity on behalf of the Dallas Police Department. Open Records Decision No. 273 (1981). See Open Records Decision No. 212 (1978). We have frequently noted that section 3(a)(11) is:

designed to protect from disclosure advice and opinion on policy matters and to encourage open and frank discussion between subordinate and chief concerning administrative action.

Open Records Decision No. 273 (1981). To except from disclosure the response of this requestor's references and former employers will not

further this purpose. We conclude that such responses are not excepted by section 3(a)(11) and thus, are available to the public.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Rick Gilpin
Jim Moellinger